

Paula Rinehart, Deputy

CV03800

Filed 10/9/2018 8:55 AM
Schelana Hock
County Clerk
Polk County, Texas

Cause No. 03800

MICHAEL COSSEY,

Plaintiff,

v.

ADVERTISING HIGHER, INC., and
RON FRANCOIS,

Defendants.

§ IN COUNTY COURT AT LAW NO. _

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§
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NO.

POLK COUNTY, TEXAS

PLAINTIFF'S AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT

NOW COMES, Plaintiff, MICHAEL COSSEY and for cause of action Plaintiff would
show the Court as follows:

**I.
DISCOVERY**

Plaintiff intends to conduct discovery in this matter in accordance with Level 3 of the Texas
Rules of Civil Procedure, Rule 190.

**II.
THE PARTIES**

Plaintiff, MICHAEL COSSEY, is an individual residing in Liberty County, Texas.

Defendant, RON FRANCOIS, is an individual and can be served at 245 Cypress Onalaska,
TX 77360.

ADVERTISING HIGHER, INC., is a Texas corporation and can be served by serving its
Registered Agent, RON FRANCOIS, at 245 Cypress Onalaska, TX 77360.

**III.
JURISDICTION AND VENUE**

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STATE OF TEXAS
COUNTY OF POLK

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my lawful custody and possession as the same is recorded in the Official Public
Records in my office and having identification number as stamped hereon, I hereby
certify on

FEB 11 2019



SHELANA HOCK
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POLK COUNTY, TEXAS
BY [Signature]
DEPUTY

EXHIBIT**A**

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The damages sought in this case are within the jurisdictional limits of the court. Venue is proper in Polk County pursuant to § 15.002 of the Texas Civil Practice and Remedies Code because Defendants maintain a principal place of business in Polk County, Texas and all or a substantial part of the events or omissions giving rise to this claim occurred in Polk County, Texas. This Court also has jurisdiction under the FLSA pursuant to 29 U.S.C. §216(b).

IV. CONDITIONS PRECEDENT

All conditions precedent to maintain this lawsuit have been performed, have occurred, have lapsed or have been waived.

V. FACTS

Pursuant to Section 10.001 of the Civil Practice and Remedies Code, each allegation or other factual contention in this Petition has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Plaintiff, MICHAEL COSSEY, worked for Defendant from July of 2015 through July 9, 2018, as a laborer and was paid an hourly rate of \$15.00 per hour for the first year and \$17.00 thereafter.

Plaintiff regularly worked fifty (50) and eighty-five (85) hours per workweek.

Plaintiff was not paid any overtime for his work in excess of 40 hours per workweek.

Plaintiff MICHAEL COSSEY, was an "employee" of Defendants, as that term is defined by the FLSA. During his employment with the Defendant, the Plaintiff was individually and directly engaged in interstate commerce, and his work was essential to Defendant's business. Plaintiff, MICHAEL COSSEY resides in Houston, Texas.

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Defendants conduct business in the state of Texas and at all times material this complaint, operated an advertising and sign company. Defendants were Plaintiff's "employer" as defined in 29 U.S.C. § 203(d).

Defendants controlled the terms and conditions of Plaintiff's employment, including the amount of his pay, his hours worked, and whether or not Plaintiff was paid overtime for the hours he worked in excess of 40 in a workweek.

At all times pertinent to this Complaint, Defendant, ADVERTISING HIGHER, INC., was an enterprise engaged in interstate commerce, purchasing materials through commerce, transporting final products through commerce, and conducting transactions through commerce.

At all times pertinent to this Complaint, Defendant, ADVERTISING HIGHER, INC., regularly owned and operated a business engaged in commerce or in the production of goods for commerce as defined by §3(r) and 3(s) of the Act, 29 U.S.C. §203(r) and 203(s), employed 2 or more people and has a gross volume of sales or business done in excess of \$500,000.00.

Plaintiff, MICHAEL COSSEY's work required that he work in excess of forty hours in any given work week.

During some or all of the workweeks of his tenure with the Defendants, Plaintiff worked in excess of 40 hours per week.

During the weeks of employment where Plaintiff worked more than 40 hours, Defendants failed to pay Plaintiff the overtime premium required by the FLSA.

Defendants did not make a good faith effort to comply with the overtime provisions contained within the FLSA.

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At all times relevant to this case, the Defendants had knowledge of Plaintiff's overtime work. Defendants approved Plaintiff's work and hours. Plaintiff's work benefitted Defendants.

Defendants' actions were willful and in blatant disregard for Plaintiff's federally protected rights.

Defendants are liable to Plaintiff under the FLSA for all unpaid overtime compensation as well as for liquidated damages, attorney's fees, out of pocket expenses and costs of Court.

At all times material to this Complaint, Defendants were the employer of the Plaintiff as a matter of economic reality, Plaintiff was dependent upon Defendants for his employment.

Additionally, Plaintiff was individually engaged in commerce and produced goods for commerce and his work was directly and vitally related to the functioning of Defendants' business activities.

VI. UNPAID OVERTIME FLSA

Throughout Plaintiff's employment with Defendants, Defendants repeatedly and willfully violated Sections 7 and 15 of the Fair Labor Standards Act by failing to compensate Plaintiff at a rate not less than one and one-half times his regular rate of pay for each hour worked in excess of 40 in a workweek.

During one or more workweeks of Plaintiff's employment with Defendants, Plaintiff has worked more than forty (40) hours per week.

Defendants were obligated by law to pay Plaintiff at a rate of one and one-half times the regular hourly rate for each hour worked over forty (40) in any workweek.

Defendants did not pay Plaintiff the overtime rate for hours worked over forty (40).

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**VII.
DAMAGES**

As a result of Defendants' unlawful conduct, Plaintiff is entitled to actual and compensatory damages, including the amount of overtime wages which were not paid and which should have been paid.

Plaintiff further seeks liquidated damages as Defendants' conduct is in violation of Section 7 of the FLSA, 29 U.S.C. § 207.

Plaintiff also seeks compensation of recoverable expenses, costs of court, expert fees, mediator fees, and out-of-pocket expense incurred and reasonable and necessary attorney's fees pursuant to 29 U.S.C. § 216(b).

**VIII.
ATTORNEYS' FEES :**

Plaintiff seeks all reasonable and necessary attorneys' fees in this case which include preparation and trial of this lawsuit, any post-trial motions and proceedings, any appeal to the Court of Appeals or Supreme Court of Texas, and any post-judgment collection efforts pursuant to 29 U. S. C. § 216(b).

**IX.
REQUEST FOR DISCLOSURE**

Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 30 days of the service of this request, the information or material described in Rule 194.2.

**X.
JURY DEMAND**

Plaintiff demands a trial by jury on all issues and has tendered the necessary fee.


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XI.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and, upon final trial, Plaintiff have Judgment against Defendants, jointly and severally, as requested above, and as follows:

1. Judgment against Defendants holding them liable for all damages alleged in this petition;
2. Interest before and after Judgment at the highest rate provided by law, until paid;
3. Costs of suit;
4. Reasonable attorney's fees, and
5. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

ROSS LAW, P.C.
1104 San Antonio St.
Austin, Texas 78701
(512) 474-7677 Telephone
(512) 474-5306 Facsimile

/s/ Charles L. Scalise

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ATTORNEYS FOR PLAINTIFF

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